IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.K.MISRA
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

W.P.Nos.45473 of 2002, 1234, 1241, 1296
1305, and 1891 of 2003

W.P.No.45473 of 2002:

1. The Secretary to Government
   Housing and Urban Development
   Department
   Chennai-600 009.

2. The Special commissioner of
   Town and Country Planning
   Chennai-600 002. .. Petitioners

versus

1. G.Mahalingam — 1st Respondent in WP.No.45473/2002
   V.Murali — 1st Respondent in WP.No.1234/2003
   K.Sabapathy — 1st Respondent in WP.No.1241/2003
   B.Ramachandran — 1st Respondent in WP.No.1296/2003
   M.Sankareeswaran — 1st Respondent in WP.No.1305/2003
   K.A.Maruthavannan — 1st Respondent in WP.No.1891/2003

2. The Secretary
   Tamil Nadu Public Service Commission
   Chennai-600 002.

3. T.Murugan
4. R.Vazhavandan
5. S.Sankaramoorthy
6. M.Sekaran
7. G.Vasanthy
8. C.Mathivanan

9. The Registrar
   The Tamil Nadu Administrative
   Tribunal, Chennai. .. Respondents 2 to 9 in all the
   the Writ Petitions

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PRAYER: Writ petitions filed under Article 226 of the Constitution of India for the issue of writs of Certiorari to call for the records pertaining to the order dated 7.6.2001, 19.10.2001 and 16.11.2001 made in O.A.No.2292,2485,2293,2484,2295 and 2294 of 1995 respectively on the file of the Tamil Nadu Administrative Tribunal, Chennai, the 9th respondent herein, and to quash the same.

For petitioners : Mr.Gomathinayagam
Special Govt. Pleader in all W.Ps.

For 1st respondent : Mr.P.Jayaraman
Senior Advocate for
Mr.C.S.Karnan

For 2nd respondent : Mr.R.Suresh Kumar

For respondents-3 to 8: Mr.K.Doraisami
Senior Advocate for
Mr.Kandavadivel Doraisami

ORDER

CHITRA VENKATARAMAN,J.

These writ petitions are filed by the Secretary to Government, Housing and Urban Development Department and another against the common order passed by the Tamil Nadu Administrative Tribunal, Madras, in O.A.No.2954 of 1991, 2292 to 2295, 2484 and 2485 of 1995 dated 7th June 2001. W.P.No.1234 of 2003 is against O.A.No.2485 of 1995, W.P.No.45473 of 2002 is against O.A.No.2292 of 1995, W.P.No.1305 of 2003 is against O.A.No.2295 of 1995, W.P.No.1241 of 2003 is against O.A.No.2293 of 1995, W.P.No.1296 of 2003 is against O.A.No.2484 of 1995 and W.P.No.1891 of 2003 is against O.A.No.2294 of 1995.

2. The contentions in all the writ petitions are one and the same. For the purpose of convenience, we shall refer to the facts in W.P.No.1234 of 2003.

3. The applicant before the Tribunal was working as a Draughtsman Grade-III in the Town and Country Planning Department, which is covered by the Sub Rules dated 25.10.1985

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in G.O.Ms.No.1111 of the Housing and Urban Development Department. Revised special Rules were issued by the Government in G.O.Ms.No.515, Housing and Urban Development Department, dated 30.11.1999. The applicant/ first respondent in the writ petition, held the post of Draughtsman Grade-III. He acquired B.E. Degree qualification in the year 1990. At the time of entry into service, as a Surveyor, he was qualified in Diploma in Civil and Rural Engineering. In the year 1991, he was temporarily promoted as Planning Assistant. It is stated that the next promotional post from the stage of a Draughtsman Grade-III is that of a Supervisor/Architectural Assistant-cum-Planning Assistant. This is available to both Degree holders as well as Diploma holders in Engineering. While Degree holders' post is called as Architectural Assistant-cum-Planning Assistant, Diploma holder's post is called Supervisor.

4. The revised special Rules prescribe the educational qualification for promotion to various categories, including that of the Architectural Assistant-cum-Planning Assistant. The Rules provide for appointment both by direct recruitment as well as by promotion. The qualification prescribed in respect of direct recruitment is a Degree in Civil Engineering or A.M.I.E. or a Degree in Architecture or Associate Membership of the Institute of Planners, India, or Institute of Architecture, India. In respect of those coming under the promotional cadre, the qualification prescribed is, anyone of the qualifications prescribed under direct recruitment and a minimum service of two years either as Draughtsman Grade-II or Draughtsman Grade-III or as both either before or after acquiring anyone of the qualifications prescribed under direct recruitment. Under Rule 2, method of filling up the post is given. It states that promotion to the post of Architectural Assistant-cum-Planning Assistant/Supervisor should be made in the category of Draughtsman Grade-II/ Draughtsman Grade-III. Under Explanation (3) to the said Rule 1, it has been stipulated therein that at any point of time, the strength of the degree holder would not be less than 30% of common cadre. Rule 2 Sub Rule (1) further provides that direct recruitment to this post should be resorted to only when suitable candidates are not available for promotion from Draughtsman Grade-II and Draughtsman Grade-III. It is stated that the post of Architectural Assistant/Planning Assistant comes under the purview of the Tamil Nadu Public Service Commission. The Sub-Rules further provide that the strength of category of Architectural Assistant/Planning Assistant shall not be less than 30% of common cadre of that category. It is stated that during 1989, there was no degree holders in Draughtsman Grade-II and Grade-III. This

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necessitated the filling up of ten vacancies by resorting to direct recruitment through the Tamil Nadu Public Service Commission, but initially, on a temporary basis through employment exchange. This was done under G.O.Ms.No.1066, Housing and Urban Development Department dated 7.11.1989. After the passing of the Government Order, since three Diploma holders passed Degree, seven vacancies remaining were filled up by direct recruitment through employment exchange. These seven persons were appointed under Rule 10(a)(i). Respondents-3 to 8 in the writ petitions are these direct recruits through employment exchange. Subsequently, the Tamil Nadu Public Service Commission, the second respondent in the writ petitions, was addressed to recruit seven candidates. The Tamil Nadu Public Service Commission conducted the necessary examination on 12.10.1992. In the meantime, respondents-3 to 8 filed O.A.No.2954 of 1991 and challenged this recruitment through the Tamil Nadu Public Service Commission. Order of interim stay was obtained on 9.3.1992, by reason of which, the Tamil Nadu Public Service Commission, the second respondent in the writ petition, could not publish the list of selected candidates. The said stay granted in O.A.No.2954 of 1991 was later on again considered in order dated 12th June 1995. The order specifically stated that respondents-3 to 8 had served for fairly 1½ years; that the regular recruitment is notified and hence, they could also compete in the examination conducted by the Tamil Nadu Public Service Commission. The plea of the respondents who are applicants in O.A.No.2954 of 1991, is that they had acquired their academic qualifications much earlier and their experience in the job should be an advantage and hence, their plea for recruitment should be considered without reference to the competitive selection, was however, rejected. The Tribunal directed the applicants to apply pursuant to the notification issued by the Tamil Nadu Public Service Commission. In the circumstances, the Tribunal vacated the direction granted by order dated 9.3.1992 and held that the process of selection and appointment in accordance with the Rules should not be held up. It is stated by the learned Special Government Pleader that the order of the Tamil Nadu Administrative Tribunal in O.A.No.2954 of 1991 had become final. However, against this order, a Review Application in R.A.No.29 of 1995 was filed. By order dated 20th March 1995, it was made clear that no order should be made pending the review. Consequently, respondents-3 to 8, appointed temporarily, continued their services. It is stated by the applicant/first respondent in all the writ petition, that he became qualified to be promoted as a Planning Assistant as early as December, 1990. His name was entitled to be included in the panel for promotion even in the year 1991. However, it was

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contended that when qualified hands were available to be promoted, temporary appointments appointing respondents-3 to 8 were made. Hence, the appointment of respondents-3 to 8 as per Rule 10(a)(i) itself was bad. In the panel published in the year 1994, the vacancies to the post of Architectural Assistant/Planning Assistant was shown as "nil". Aggrieved by this, the applicant/first respondent moved the Tamil Nadu Administrative Tribunal, praying for a relief to direct the Secretary to Government, Housing and Urban Development Department and the Director, Town and Country Planning - writ petitioners-1 and 2, to oust the temporary appointees under Rule 10(a)(i), respondents-3 to 8 in the writ petitions, from the post of Architectural Assistant/Planning Assistant/Supervisor; to promote the first respondent herein as Architectural Assistant-cum-Planning Assistant, now occupied by the temporary post holder, as per the seniority from the date he acquired the Degree qualification with all service benefits and consequential monetary benefits; to direct the respondents not to resort to direct recruitment even through the Tamil Nadu Public Service Commission when qualified hands, and in particular, the applicant/first respondent was available for promotion.

5. The basis of such a claim rested on the footing that the resort to appointment under Rule 10(a)(i) when qualified hands are available was arbitrary, not maintainable and that the appointees as per Rule 10(a)(i) could not have any preference over the claims of the promotees who are fully qualified to hold the post; that the appointment itself was contrary to Rule 2 of the Tamil Nadu Town and Country Planning Subordinate Services Rules. The O.P. was resisted by the writ petitioners supporting the appointment of the candidates under Rule 10(a)(i). Similar contentions were taken by other applicants. Similar prayers were made by the respective first respondents in the writ petitions, namely, W.P.Nos.45473 of 2002, 1305, 1241, 1296 and 1891 of 2003. By a common order dated 7th June 2001, the Tribunal took the view that the applicants in all the O.As. except in O.A.No.2954 of 1991, respondents-3 to 8 were appointed in 1990; the other applicants in other O.Ps. have become qualified for promotion and that the applicants could not be promoted on account of the pendency of the proceedings and hence, all the applicants should be promoted according to their seniority and placed above the Service Commission candidates numbering seven and the applicants in O.P.No.2954 of 1991 – respondents-3 to 8 in the writ petition, who were appointed temporarily as per Rule 10(a)(i) and continued in service, would be placed below the two categories, namely, promotees and regular direct recruits through the Public Service Commission. The Tribunal further made it clear that respondents-3 to 8,

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applicants in O.A.No.2954 of 1991, shall not claim any seniority over the above two categories of persons.

6. Against this order of the Tribunal, the Secretary to Government, Housing and Urban Development Department and Special Commissioner of Town and Country Planning, Chennai, have preferred the writ petitions.

7. The order of the Tribunal is challenged on the premise that the appointments of the temporary hands under Rule 10(a)(i) was necessitated in view of the exigencies of administration; that even though the first respondent in W.P.No.1234 of 2003 acquired eligibility for promotion in the year 1990, there was no vacancy in the year 1990 to promote him. Though the vacancy arose in the year 2001, in view of the Tribunal's order dated 21.1.2000, staying the operation of the amended Rules in O.A.No.497 of 2000, the first respondent could not be promoted. Learned Special Government Pleader referred to the amended Rule dated 30.11.1991, as per which, the feeder category for promotion for Architectural Assistant was changed into Supervisor Draughtsman Grade-II. Unless the first respondent was Supervisor/Draughtsman Grade-II, he would not acquire the eligibility and further promotion as Architectural Assistant/Planning Assistant. Hence, the direction of the Tribunal to consider the promotion according to the respective dates of acquiring eligibility for promotion with all service benefits was not sustainable. The writ petitioners further contended that the selected candidates, as per the Tamil Nadu Public Service Commission's examination, did not join the services. Hence, the direction given by the Tribunal to accommodate the successful candidates was unsustainable and excessive. The writ petitioners further raised a ground that the Tribunal should allow the Department to fix seniority for the persons in accordance with the Rules existing in force and that as per the new Rule, the recruitment ratio was 1:2 and thereby, seven candidates, respondents-3 to 8, would not be absorbed to the Department; hence, the Tribunal's order was unsustainable in law. The respective first respondent in the writ petitions has filed a counter affidavit wherein, they referred to the order of the Tribunal dated 19.1.1995 in O.A.No.1161 of 1994 filed by one A.V.Madhavan, wherein, the Tribunal had directed the writ petitioners that the directly recruited temporary incumbent should be replaced as and when qualified departmental candidates acquired the required qualification and also rendered their services in the feeder category. The first respondent further contends that the posts occupied under Rule 10(a)(i) are purely temporary in nature and when regular appointments were made, the temporary post should

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be treated as vacant post and hence, there was no vacancies was not correct. Referring to the qualification acquired for promotion to the post of Architectural Assistant/Planning Assistant, the respondents alleged that the writ petitioners were simply delaying the issue and hence, prayed for dismissal of the writ petitions.

8. Learned Special Government Pleader fairly stated that the order of the Tribunal in O.A.No.2954 of 1991 filed by respondents-3 to 8 to get temporary candidates selected under Rule 10(a)(i) had become final and the same was not challenged by respondents-3 to 8; hence, the directions given as far as the official proceedings are concerned is binding on both parties, the writ petitioners and respondents-3 to 8. The contention of the learned Special Government Pleader is that the first respondents in all the writ petitions had acquired their qualifications for consideration for promotion much later and hence, the direction of the Tribunal was excessive and unsustainable. Learned Special Government Pleader further relied on the decision of the Supreme Court in 2002 (6) S.L.R. 532 in the case of HEAVY ENGINEERING CORPN. LTD. & OTHERS Vs.

KAMAKHYA PRASAD & OTHERS and contended that the Tribunal, for retrospective consideration in the promotion, was bad in law.

9. Mr.P.Jayaraman, learned senior counsel appearing for the first respondent in W.P.No.1234 of 2003, supported the order of the Tribunal and pointed out that the Tribunal had correctly come to the conclusion that the promotees are to be considered first according to their seniority as and when they become eligible for promotion and that the temporary appointees numbering seven, appointed as per Rule 10(a)(i) were to be ranked below the promotees and the direct recruits. Learned senior counsel further submitted that when respondents-3 to 8, temporary appointees under Rule 10(a)(i) had not challenged the order before this Court, the writ petitioners could not have any grievance at all in the matter of implementing the order of the Tribunal and that in the guise of challenging the order of the Tribunal, the writ petitioners are espousing the cause of respondents-3 to 8 against its own Government servants. Learned senior counsel placed reliance on the decision of the Supreme Court reported in AIR 2000 S.C. 594 in the case of S.I.ROOPLAL Vs. Lt. GOVERNOR, DELHI.

10. Mr.K.Doraisami, learned senior counsel appearing for respondents-3 to 8, submitted that the services of the seven temporary candidates appointed under Rule 10(a)(i) are all

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regularised and inter se seniority among all the parties was not in dispute.

11. On hearing both parties, we feel that there is no justification for the State to challenge the order of the Tribunal, more so in the context of the fact that respondents-3 to 8 had not made a dispute over the directions given by the Tribunal. In any event, when there is no practical difficulty in the matter of implementing the directions of the Tribunal, the writ petitioners should have taken up a positive role in the matter of giving effect to the order of the Tribunal and not to make an inter se dispute among its own employees. There are no grounds to reject the reasoning of the Tribunal.

12. The reliance placed by the learned Special Government Pleader to the decision of the Supreme Court reported in 2002 (6) S.L.R. 532 in the case of HEAVY ENGINEERING CORPN. LTD. & OTHERS Vs. KAMAKHYA PRASAD & OTHERS is inapplicable, as the facts prevalent therein had no relevance at all to the case on hand. In the reported case, the applicants before the High Court did not have the specialised qualification that their juniors had; consequently, the direction given to consider the case of the applicants for promotion retrospectively was rejected. As may be seen from the order of the Tribunal and the facts stated, the first respondents in all the writ petitions had secured the necessary qualification as early as April, 1990 to December 1995, and that the appointment of respondents-3 to 8 itself was only to meet the administrative exigencies and hence, under Rule 10(a)(i), in the context of the factual differences, the decision of the Supreme Court is distinguishable to the case on hand.

13. It is stated that some of the promotees had retired from service and that almost all the applicants who are first respondents in all these writ petitions, had acquired their qualifying Degree between April, 1990 and December 1995 and that all of them are already promoted and further promotions had also been granted. In the circumstances, the question that arises for consideration is as to what could be the benefits that these first respondents are to be given on the retrospective promotion to be granted to these persons after the order of the Tribunal. Mr.Jayaraman learned senior counsel appearing for the first respondent in the writ petitions submits that but for the orders of stay and the delay caused thereon in the writ proceedings, these contesting respondents would have had the benefit of promotion immediately on their acquiring their Degree in Engineering and hence, they should not suffer any monetary

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benefit on account of the delay in promoting these persons. While we have our sympathies for the first respondents in all the writ petitions, we do not think that the first respondents could be favoured with full monetary benefit for the period for which they had not functioned in their promotional cadre. The monetary benefits cannot be worked out retrospectively from the day they became eligible for further consideration for the promotional post and as a measure of justice, they are entitled only for a notional benefit to be calculated from the day they are entitled to occupy the said promotional post.

14. A series of decisions of the Supreme Court in similar circumstances have held that in cases of retrospective promotions granted, the principle of "no work no pay" is relevant and that notional promotion would be the only relief that can be granted as a measure of equity and that the claim for payment of arrears is far-fetched having no basis in law vide (2003) 7 SCC 238 (A.K.SOUMINI Vs. STATE BANK OF TRAVANCORE). The decisions relied on by the learned counsel for the first respondent relate to cases of punishment which were later on set aside on the ground of illegality or on non-compliance of any of the provisions of the Act and hence, have no relevance to the cases on hand. The judgment of the Supreme Court reported in AIR 2000 S.C. 594 in the case of S.I.ROOPLAL Vs. Lt. GOVERNOR, DELHI clearly commented on the kind of attitude of the State in filing an appeal which gives an impression "that it is espousing the cause of a particular group of employees against another group of its own employees". This case is no different. In the light of the reasoning of the Tribunal, more particularly in the context of the order in O.A.No.2954 of 1991, the order of the Tribunal deserves to be accepted.

In the light of what we have stated earlier, we confirm the order of the Tribunal subject to the observations made above. However, there will be no order as to costs. Connected W.M.P.No.66401 of 2002, W.P.M.P.Nos.1538, 1546, 1609, 1619 and 2324 of 2003 are closed.

Ksv

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To:

1. The Secretary to Government
   Housing and Urban Development
        Department
   Chennai-600 009.

2. The Special commissioner of
   Town and Country Planning
   Chennai-600 002.

3. The Secretary
   Tamil Nadu Public Service Commission
   Chennai-600 002.

4. The Registrar
   Tamilnadu Administrative Tribunal
   Chennai.

+ six cc to Mr.C.S.Karnan, Advocate Sr.Nos.6193 to 6198
+ one cc to Mrs.Muthumani Doraisami, Advocate Sr.No.6047

JRG (CO)
RSM/15/2/2006

W.P.Nos.45473 of 2002,
1234, 1241, 1296, 1305
and 1891 of 2003

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